

# EXHIBIT 6

JAMES M. KINDER  
5775 Caminito Pulsera  
La Jolla, CA 92037-7160  
Telephone: (858) 551-8852  
Facsimile: (858) 551-8859

Plaintiff in Pro Per

RECEIVED  
SEP 18 2003  
JW  
BUT NOT FILED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,  
  
Plaintiff,  
  
v.  
  
RITE AID CORPORATION,  
and DOES 1 through 100 inclusive,  
  
Defendants.

CASE NO. **G/C 818821**  
COMPLAINT FOR DAMAGES FOR  
VIOLATION(S) OF TELEPHONE  
CONSUMER PROTECTION ACT OF  
1991 ("TCPA")  
[47 U.S.C. §227 & 47 C.F.R. §64.1200]

Plaintiff JAMES M. KINDER alleges:

1. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA"),
2. Plaintiff is, and at all times herein mentioned was, a resident of the County of San Diego, State of California.
3. Defendants are, and at all times herein mentioned were, business organizations of unknown form, doing business in the County of San Diego, State of California.
4. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named

1 defendants is responsible in some manner for the occurrences herein alleged and that plaintiff's  
2 damages as herein alleged were proximately caused by their conduct.

3 5. At all times herein mentioned each defendant was the partner, agent and employee  
4 of each co-defendant herein and was at all times acting within the scope of such partnership,  
5 agency and employment and each defendant ratified the conduct of each co-defendant herein.

6 6. Even though the TCPA is a federal statute, state courts have exclusive jurisdiction  
7 over private actions brought pursuant to its provisions.

8 7. A few years ago, plaintiff, for valuable consideration, obtained the voice mail  
9 telephone number (619) 999-9999. Plaintiff obtained this number so that his clients and  
10 customers, as well as potential clients and customers, would easily remember it, thereby making  
11 it an extremely valuable number.

12 8. Subdivision (b)(1)(A)(iii) of section 227 of title 47 of the United States Code and  
13 subdivision (a)(1)(iii) of section 64.12000 of title 47 of the Code of Federal Regulations make it  
14 unlawful for any person within the United States to make any call using any automatic telephone  
15 dialing system to any telephone number assigned to a paging service, cellular telephone service,  
16 specialized mobile radio service, or other radio common carrier service, or any service for which  
17 the called party is charged for the call.

18 9. Defendants are primarily engaged in the business of debt collection or other  
19 business activity and, in connection with such business, make telephone calls using an automatic  
20 telephone dialing system.

21 10. The telephone number (619) 999-9999 is assigned to a paging service, which also  
22 provides voice mail service.

23 11. Defendants have violated the TCPA by frequently calling plaintiff's voice mail at  
24 (619) 999-9999, using an automatic telephone dialing system.

25 12 Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a  
26 private right of action in state court for violation of the above subsection. Plaintiff may obtain  
27 relief in the form of injunctive relief, or plaintiff may recover \$500.00 for each violation, or both.  
28 If the court finds that defendants' violations were willful or knowing, it may, in its discretion,

1 award up to three times that amount.

2 13. Defendants have made at least nine (9) calls to plaintiff's voice mail number.

3 WHEREFORE plaintiff prays for judgment against defendants, and each of them, as  
4 follows:

- 5 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 or 47 C.F.R.  
6 §64.1200;
- 7 2. For an award of \$1,500.00 for each such violation found to have been willful;
- 8 3. For costs of suit herein incurred; and
- 9 4. For such further relief as the Court deems proper.

10  
11 Dated: September 15, 2003

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14 JAMES M. KINDER, Plaintiff in Pro Per  
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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3 <sup>RD</sup> AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792	<b>FILED</b> Clerk of the Superior Court <b>OCT 08 2003</b> By: <b>C. VASQUEZ, Deputy</b>
PLAINTIFF(S)/PETITIONER(S)  <b>JAMES M. KINDER</b>	
DEFENDANT(S)/RESPONDENT(S) <b>RITE AID CORPORATION</b>	Judge: <b>JOHN S. EINHORN</b> Dept.: <b>24</b>
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL</b> <b>(CCP 1013a(4))</b>	CASE NUMBER: <b>GIC818821</b>

I, **STEPHEN LOVE**, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

**ORDER DENYING PERMISSION TO FILE NEW LITIGATION**  
**DATED: OCTOBER 7, 2003**

On the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at:

☒ San Diego    ☐ Vista    ☐ El Cajon    ☐ Chula Vista    ☐ Oceanside    ☐ Ramona,    California.

<b>JAMES KINDER</b> <b>5775 CAMINITO PULSERA</b> <b>LA JOLLA, CA 92037-7160</b>	
---	--

**STEPHEN LOVE**  
**CLERK OF THE SUPERIOR COURT**

Date: October 8, 2003

By: , Deputy

**C. Vasquez**

**CLERK'S CERTIFICATE OF MAILING**

F I L E D  
Clerk of the Superior Court

OCT 07 2003

By: C. VASQUEZ, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,  
Plaintiff,  
vs.  
RITE AID CORPORATION,  
Defendant.

Case No: GIC 818821

ORDER DENYING PERMISSION TO FILE  
NEW LITIGATION (C.C.P. § 391.7b)

The court has reviewed the papers filed by plaintiff on September 18, 2003. JAMES M. KINDER'S application for an order granting vexatious litigant permission to file new litigation is denied pursuant to California Code of Civil Procedure § 391.7 for the reasons stated below.

In his complaint plaintiff alleges that defendant has initiated telephone calls to his phone in violation of the federal Telephone Consumer Protection Act of 1991. The specific violation alleged is multiple calls from an automated dialing system to his voice mail, which is assigned to a paging service.

Plaintiff has not filed any declarations, nor is his Complaint verified. Without some form of evidence this court has nothing but bare allegations upon which to base it's ruling. These allegations, both in their facts and evidentiary value, are insufficient for this court to conclude this action has sufficient potential merit to allow plaintiff to proceed and is not simply filed to harass the defendant. In addition, plaintiff is aware of the factual and legal issues presented by

1 this action and appears to have drafted his unverified complaint ambiguously in order to avoid  
2 those same issues.

3 This court takes Judicial Notice pursuant to California Evidence Code § 452 of the file in  
4 case number GIC 789588. That action involved many of the same issues as does this action.  
5 This Court specifically takes Judicial Notice of the order granting summary judgment in favor of  
6 the defendant wherein the court found, with respect to plaintiff's phone number, as follows: "the  
7 number is not "assigned to a paging service" because it is undisputed that the number is not  
8 longer used in conjunction with a pager. Instead, the number is assigned to a voicemail service  
9 and Mr. Kinder is not charged based on the amount of calls received. The ordinary and plain  
10 meaning of the term "paging service" suggests a paid service in which the user is alerted each  
11 time a call is made to the number. This is not analogous to a voicemail service in which the user  
12 periodically calls the service to retrieve messages." Because the only evidence before this court  
13 is that the number is not assigned to a paging service, as is required by 47 U.S.C. 227, the  
14 complaint has no merit.

15 This court further takes note that there were factual issues as to whether the 999-9999  
16 number was randomly generated or was a default number, or was otherwise intentionally entered  
17 in the system, and whether a random number generator was, in fact, used. Those same issues are  
18 present here and plaintiff makes no attempt to provide this court with any evidence that they  
19 would be resolved in his favor.

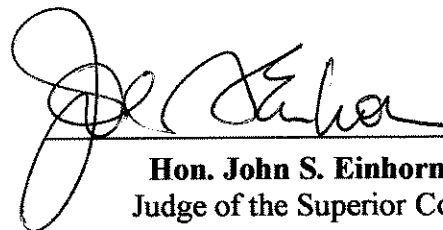
20 Plaintiff is has a legal education and, based thereon, is presumed to understand the legal  
21 impediments these findings present in the present case..

22 Therefore, this court finds that this litigation does not have merit and has been filed for  
23 the purpose of harassment and/or delay.

24 IT IS SO ORDERED.

25 Dated this 7th day of October, 2003.

By:



**Hon. John S. Einhorn**  
Judge of the Superior Court

# EXHIBIT 7



JAMES M. KINDER  
5775 Caminito Pulsera  
La Jolla, CA 92037-7160  
Telephone: (858) 551-8852  
Facsimile: (858) 551-8859

Plaintiff in Pro Per

RECEIVED  
SEP 18 2003  
BUT NOT FILED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,  
Plaintiff,  
v.  
MITSUBISHI MOTORS CREDIT OF  
AMERICA, INC.,  
and DOES 1 through 100, inclusive,  
Defendants.

CASE NO.



818822

COMPLAINT FOR DAMAGES FOR  
VIOLATION(S) OF TELEPHONE  
CONSUMER PROTECTION ACT OF  
1991 ("TCPA")  
[47 U.S.C. §227 & 47 C.F.R. §64.1200]

Plaintiff JAMES M. KINDER alleges:

1. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").
2. Plaintiff is, and at all times herein mentioned was, a resident of the County of San Diego, State of California.
3. Defendants are, and at all times herein mentioned were, business organizations of unknown form, doing business in the County of San Diego, State of California.
4. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named

1 defendants is responsible in some manner for the occurrences herein alleged and that plaintiff's  
2 damages as herein alleged were proximately caused by their conduct.

3 5. At all times herein mentioned each defendant was the partner, agent and employee  
4 of each co-defendant herein and was at all times acting within the scope of such partnership,  
5 agency and employment and each defendant ratified the conduct of each co-defendant herein.

6 6. Even though the TCPA is a federal statute, state courts have exclusive jurisdiction  
7 over private actions brought pursuant to its provisions.

8 7. A few years ago, plaintiff, for valuable consideration, obtained the voice mail  
9 telephone number (619) 999-9999. Plaintiff obtained this number so that his clients and  
10 customers, as well as potential clients and customers, would easily remember it, thereby making  
11 it an extremely valuable number.

12 8. Subdivision (b)(1)(A)(iii) of section 227 of title 47 of the United States Code and  
13 subdivision (a)(1)(iii) of section 64.12000 of title 47 of the Code of Federal Regulations make it  
14 unlawful for any person within the United States to make any call using any automatic telephone  
15 dialing system to any telephone number assigned to a paging service, cellular telephone service,  
16 specialized mobile radio service, or other radio common carrier service, or any service for which  
17 the called party is charged for the call.

18 9. Defendants are primarily engaged in the business of debt collection, and in  
19 connection with such business make telephone calls using an automatic telephone dialing system.

20 10. The telephone number (619) 999-9999 is assigned to a paging service, which also  
21 provides voice mail service.

22 11. Defendants have violated the TCPA by frequently calling plaintiff's voice mail at  
23 (619) 999-9999, using an automatic telephone dialing system.

24 12 Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a  
25 private right of action in state court for violation of the above subsection. Plaintiff may obtain  
26 relief in the form of injunctive relief, or plaintiff may recover \$500.00 for each violation, or both.  
27 If the court finds that defendants' violations were willful or knowing, it may, in its discretion,  
28 award up to three times that amount.

1           13. Defendants have made at least fifty-five (55) calls to plaintiff's voice mail  
2 number.

3           WHEREFORE plaintiff prays for judgment against defendants, and each of them, as  
4 follows:

- 5           1. For an award of \$500.00 for each violation of 47 U.S.C. §227 or 47 C.F.R.  
6           §64.1200;
- 7           2. For an award of \$1,500.00 for each such violation found to have been willful;
- 8           3. For costs of suit herein incurred; and
- 9           4. For such further relief as the Court deems proper.

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11 Dated: September 15, 2003

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JAMES M. KINDER, Plaintiff in Pro Per

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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3 <sup>RD</sup> AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792	<b>F I L E D</b> Clerk of the Superior Court <b>OCT 08 2003</b> <b>By: C. VASQUEZ, Deputy</b>
PLAINTIFF(S)/PETITIONER(S)  <b>JAMES M. KINDER</b>	
DEFENDANT(S)/RESPONDENT(S) <b>MITSUBISHI MOTORS CREDIT OF AMERICA, INC.</b>	Judge: <b>JOHN S. EINHORN</b> Dept.: <b>24</b>
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL</b> <b>(CCP 1013a(4))</b>	CASE NUMBER: <b>GIC818822</b>

I, **STEPHEN LOVE**, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

**ORDER DENYING PERMISSION TO FILE NEW LITIGATION**  
**DATED: OCTOBER 7, 2003**

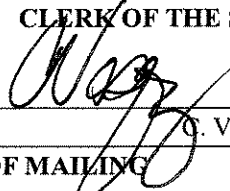
On the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at:

☒ San Diego    ☐ Vista    ☐ El Cajon    ☐ Chula Vista    ☐ Oceanside    ☐ Ramona,    California.

<b>JAMES KINDER</b> <b>5775 CAMINITO PULSERA</b> <b>LA JOLLA, CA 92037-7160</b>	
---	--

**STEPHEN LOVE**  
**CLERK OF THE SUPERIOR COURT**

Date: October 8, 2003

By: , Deputy  
**C. Vasquez**

**CLERK'S CERTIFICATE OF MAILING**

F I L E D  
Clerk of the Superior Court

OCT 07 2003

By: C. VASQUEZ, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,

Plaintiff,

vs.

mitsubishi motors credit of  
america, inc.  
Defendant.

Case No: GIC 818822

ORDER DENYING PERMISSION TO FILE  
NEW LITIGATION (C.C.P. § 391.7b)

The court has reviewed the papers filed by plaintiff on September 18, 2003. JAMES M. KINDER'S application for an order granting vexatious litigant permission to file new litigation is denied pursuant to California Code of Civil Procedure § 391.7 for the reasons stated below.

In his complaint plaintiff alleges that defendant has initiated telephone calls to his phone in violation of the federal Telephone Consumer Protection Act of 1991. The specific violation alleged is multiple calls from an automated dialing system to his voice mail, which is assigned to a paging service.

Plaintiff has not filed any declarations, nor is his Complaint verified. Without some form of evidence this court has nothing but bare allegations upon which to base it's ruling. These allegations, both in their facts and evidentiary value, are insufficient for this court to conclude this action has sufficient potential merit to allow plaintiff to proceed and is not simply filed to harass the defendant. In addition, plaintiff is aware of the factual and legal issues presented by

1 this action and appears to have drafted his unverified complaint ambiguously in order to avoid  
2 those same issues.

3 This court takes Judicial Notice pursuant to California Evidence Code § 452 of the file in  
4 case number GIC 789588. That action involved many of the same issues as does this action.  
5 This Court specifically takes Judicial Notice of the order granting summary judgment in favor of  
6 the defendant wherein the court found, with respect to plaintiff's phone number, as follows: "the  
7 number is not "assigned to a paging service" because it is undisputed that the number is not  
8 longer used in conjunction with a pager. Instead, the number is assigned to a voicemail service  
9 and Mr. Kinder is not charged based on the amount of calls received. The ordinary and plain  
10 meaning of the term "paging service" suggests a paid service in which the user is alerted each  
11 time a call is made to the number. This is not analogous to a voicemail service in which the user  
12 periodically calls the service to retrieve messages." Because the only evidence before this court  
13 is that the number is not assigned to a paging service, as is required by 47 U.S.C. 227, the  
14 complaint has no merit.

15 This court further takes note that there were factual issues as to whether the 999-9999  
16 number was randomly generated or was a default number, or was otherwise intentionally entered  
17 in the system, and whether a random number generator was, in fact, used. Those same issues are  
18 present here and plaintiff makes no attempt to provide this court with any evidence that they  
19 would be resolved in his favor.

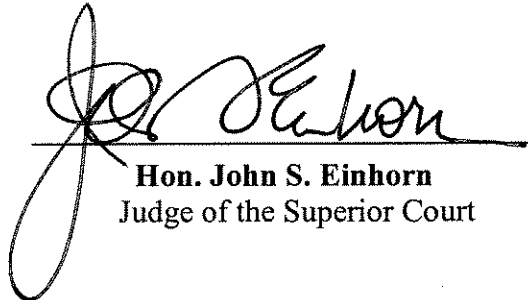
20 Plaintiff is has a legal education and, based thereon, is presumed to understand the legal  
21 impediments these findings present in the present case..

22 Therefore, this court finds that this litigation does not have merit and has been filed for  
23 the purpose of harassment and/or delay.

24 IT IS SO ORDERED.

25 Dated this 7<sup>th</sup> day of October, 2003.

By:



**Hon. John S. Einhorn**  
Judge of the Superior Court

# EXHIBIT 8



JAMES M. KINDER  
5775 Caminito Pulsera  
La Jolla, CA 92037-7160  
Telephone: (858) 551-8852  
Facsimile: (858) 551-8859

Plaintiff in Pro Per

RECEIVED

SEP 18 2007

BUT NOT FILED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,

Plaintiff,

v.

NCO FINANCIAL SYSTEMS, INC.,  
and DOES 1 through 100 inclusive,

Defendants.

CASE NO.

GIC 818820

COMPLAINT FOR DAMAGES FOR  
VIOLATION(S) OF TELEPHONE  
CONSUMER PROTECTION ACT OF  
1991 ("TCPA")  
[47 U.S.C. §227 & 47 C.F.R. §64.1200]

Plaintiff JAMES M. KINDER alleges:

1. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

2. Plaintiff is, and at all times herein mentioned was, a resident of the County of San Diego, State of California.

3. Defendants are, and at all times herein mentioned were, business organizations of unknown form, doing business in the County of San Diego, State of California.

4. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.

Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

Plaintiff is informed and believes and thereon alleges that each of the fictitiously named



1 defendants is responsible in some manner for the occurrences herein alleged and that plaintiff's  
2 damages as herein alleged were proximately caused by their conduct.

3 5. At all times herein mentioned each defendant was the partner, agent and employee  
4 of each co-defendant herein and was at all times acting within the scope of such partnership,  
5 agency and employment and each defendant ratified the conduct of each co-defendant herein.

6 6. Even though the TCPA is a federal statute, state courts have exclusive jurisdiction  
7 over private actions brought pursuant to its provisions.

8 7. A few years ago, plaintiff, for valuable consideration, obtained the voice mail  
9 telephone number (619) 999-9999. Plaintiff obtained this number so that his clients and  
10 customers, as well as potential clients and customers, would easily remember it, thereby making  
11 it an extremely valuable number.

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14 unlawful for any person within the United States to make any call using any automatic telephone  
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17 the called party is charged for the call.

18 9. Defendants are primarily engaged in the business of debt collection and in  
19 connection with such business make telephone calls using an automatic telephone dialing system.

20 10. The telephone number (619) 999-9999 is assigned to a paging service, which also  
21 provides voice mail service.

22 11. Defendants have violated the TCPA by frequently calling plaintiff's voice mail at  
23 (619) 999-9999, using an automatic telephone dialing system.

24 12 Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a  
25 private right of action in state court for violation of the above subsection. Plaintiff may obtain  
26 relief in the form of injunctive relief, or plaintiff may recover \$500.00 for each violation, or both.  
27 If the court finds that defendants' violations were willful or knowing, it may, in its discretion,  
28 award up to three times that amount.

13. Defendants have made at least one hundred and one (101) calls to plaintiff's voice mail number.

WHEREFORE plaintiff prays for judgment against defendants, and each of them, as follows:

1. For an award of \$500.00 for each violation of 47 U.S.C. §227 or 47 C.F.R. §64.1200;
2. For an award of \$1,500.00 for each such violation found to have been willful;
3. For costs of suit herein incurred; and
4. For such further relief as the Court deems proper.

Dated: September 15, 2003



JAMES M. KINDER, Plaintiff in Pro Per

F I L E D

Clerk of the Superior Court

OCT 07 2003

By: C. VASQUEZ, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,

Plaintiff,

vs.

NCO FINANCIAL SYSTEMS INC.,

Defendant.

Case No: GIC 818820

ORDER DENYING PERMISSION TO FILE  
NEW LITIGATION (C.C.P. § 391.7b)

The court has reviewed the papers filed by plaintiff on September 18, 2003. JAMES M. KINDER'S application for an order granting vexatious litigant permission to file new litigation is denied pursuant to California Code of Civil Procedure § 391.7 for the reasons stated below.

In his complaint plaintiff alleges that defendant has initiated telephone calls to his phone in violation of the federal Telephone Consumer Protection Act of 1991. The specific violation alleged is multiple calls from an automated dialing system to his voice mail, which is assigned to a paging service.

Plaintiff has not filed any declarations, nor is his Complaint verified. Without some form of evidence this court has nothing but bare allegations upon which to base it's ruling. These allegations, both in their facts and evidentiary value, are insufficient for this court to conclude this action has sufficient potential merit to allow plaintiff to proceed and is not simply filed to harass the defendant. In addition, plaintiff is aware of the factual and legal issues presented by

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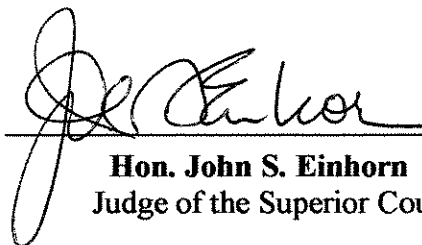
20 Plaintiff is has a legal education and, based thereon, is presumed to understand the legal  
21 impediments these findings present in the present case..

22 Therefore, this court finds that this litigation does not have merit and has been filed for  
23 the purpose of harassment and/or delay.

24 IT IS SO ORDERED.

25 Dated this 7<sup>th</sup> day of October, 2003.

By:



**Hon. John S. Einhorn**  
Judge of the Superior Court

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3 <sup>RD</sup> AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792		<b>F I L E D</b> Clerk of the Superior Court <b>OCT 08 2003</b> By: C. VASQUEZ, Deputy
PLAINTIFF(S)/PETITIONER(S) <p style="text-align: center;"><b>JAMES M. KINDER</b></p>		
DEFENDANT(S)/RESPONDENT(S) <b>NCO FINANCIAL SYSTEMS, INC.</b>		Judge: <b>JOHN S. EINHORN</b> Dept.: <b>24</b>
CLERK'S CERTIFICATE OF SERVICE BY MAIL (CCP 1013a(4))		CASE NUMBER: <b>GIC818820</b>

I, **STEPHEN LOVE**, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

**ORDER DENYING PERMISSION TO FILE NEW LITIGATION**  
**DATED: OCTOBER 7, 2003**

On the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at:

☒ San Diego    ☐ Vista    ☐ El Cajon    ☐ Chula Vista    ☐ Oceanside    ☐ Ramona,    California.

**JAMES KINDER**  
**5775 CAMINITO PULSERA**  
**LA JOLLA, CA 92037-7160**

**STEPHEN LOVE**  
**CLERK OF THE SUPERIOR COURT**

Date: October 8, 2003

By: , Deputy

C. Vasquez

**CLERK'S CERTIFICATE OF MAILING**

# EXHIBIT 9

1 JAMES M. KINDER  
5775 Caminito Pulsera  
2 La Jolla, CA 92037-7160  
Telephone: (858) 551-8852  
3 Facsimile: (858) 551-8859

4 Plaintiff in Pro Per

RECEIVED  
SEP 18 2007  
BUT NOT FILED

5  
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7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN DIEGO

10  
11 JAMES M. KINDER,  
12 Plaintiff,  
13  
14 v.  
15 24 HOUR FITNESS USA, INC.,  
and DOES 1 through 100 inclusive,  
16 Defendants.

CASE NO. **GIC 818819**  
COMPLAINT FOR DAMAGES FOR  
VIOLATION(S) OF TELEPHONE  
CONSUMER PROTECTION ACT OF  
1991 ("TCPA")  
[47 U.S.C. §227 & 47 C.F.R. §64.1200]

17  
18 Plaintiff JAMES M. KINDER alleges:

- 19 1. Plaintiff is bringing this action pursuant to the provisions of the Telephone  
20 Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").
- 21 2. Plaintiff is, and at all times herein mentioned was, a resident of the County  
22 of San Diego, State of California.
- 23 3. Defendants are, and at all times herein mentioned were, business organizations of  
24 unknown form, doing business in the County of San Diego, State of California.
- 25 4. Plaintiff is unaware of the true names and capacities of defendants sued herein as  
26 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.  
27 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.  
28 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named



1 defendants is responsible in some manner for the occurrences herein alleged and that plaintiff's  
2 damages as herein alleged were proximately caused by their conduct.

3 5. At all times herein mentioned each defendant was the partner, agent and employee  
4 of each co-defendant herein and was at all times acting within the scope of such partnership,  
5 agency and employment and each defendant ratified the conduct of each co-defendant herein.

6 6. Even though the TCPA is a federal statute, state courts have exclusive jurisdiction  
7 over private actions brought pursuant to its provisions.

8 7. A few years ago, plaintiff, for valuable consideration, obtained the voice mail  
9 telephone number (619) 999-9999. Plaintiff obtained this number so that his clients and  
10 customers, as well as potential clients and customers, would easily remember it, thereby making  
11 it an extremely valuable number.

12 8. Subdivision (b)(1)(A)(iii) of section 227 of title 47 of the United States Code and  
13 subdivision (a)(1)(iii) of section 64.12000 of title 47 of the Code of Federal Regulations make it  
14 unlawful for any person within the United States to make any call using any automatic telephone  
15 dialing system to any telephone number assigned to a paging service, cellular telephone service,  
16 specialized mobile radio service, or other radio common carrier service, or any service for which  
17 the called party is charged for the call.

18 9. Defendants are primarily engaged in the business of debt collection or other  
19 business activity and, in connection with such business, make telephone calls using an automatic  
20 telephone dialing system.

21 10. The telephone number (619) 999-9999 is assigned to a paging service, which also  
22 provides voice mail service.

23 11. Defendants have violated the TCPA by frequently calling plaintiff's voice mail at  
24 (619) 999-9999, using an automatic telephone dialing system.

25 12 Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a  
26 private right of action in state court for violation of the above subsection. Plaintiff may obtain  
27 relief in the form of injunctive relief, or plaintiff may recover \$500.00 for each violation, or both.  
28 If the court finds that defendants' violations were willful or knowing, it may, in its discretion,



1 award up to three times that amount.

2 13. Defendants have made at least nine (9) calls to plaintiff's voice mail number.

3 WHEREFORE plaintiff prays for judgment against defendants, and each of them, as  
4 follows:

5 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 or 47 C.F.R.  
6 §64.1200;

7 2. For an award of \$1,500.00 for each such violation found to have been willful;

8 3. For costs of suit herein incurred; and

9 4. For such further relief as the Court deems proper.

10  
11 Dated: September 15, 2003

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14 JAMES M. KINDER, Plaintiff in Pro Per  
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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3 <sup>RD</sup> AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792		<b>F I L E D</b> Clerk of the Superior Court  <b>OCT 08 2003</b>  By: C. VASQUEZ, Deputy
PLAINTIFF(S)/PETITIONER(S)  <b>JAMES M. KINDER</b>		
DEFENDANT(S)/RESPONDENT(S) <b>24 HOUR FITNESS USA, INC.</b>		Judge: <b>JOHN S. EINHORN</b> Dept.: <b>24</b>
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL</b> <b>(CCP 1013a(4))</b>		CASE NUMBER: <b>GIC818819</b>

I, **STEPHEN LOVE**, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

**ORDER DENYING PERMISSION TO FILE NEW LITIGATION**  
**DATED: OCTOBER 7, 2003**

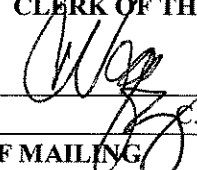
On the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at:

☒ San Diego    ☐ Vista    ☐ El Cajon    ☐ Chula Vista    ☐ Oceanside    ☐ Ramona,    California.

<b>JAMES KINDER</b> <b>5775 CAMINITO PULSERA</b> <b>LA JOLLA, CA 92037-7160</b>	
---	--

**STEPHEN LOVE**  
**CLERK OF THE SUPERIOR COURT**

Date: October 8, 2003

By: , Deputy

C. Vasquez

**CLERK'S CERTIFICATE OF MAILING**

F I L E D  
Clerk of the Superior Court

OCT 07 2003

By: C. VASQUEZ, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,  
Plaintiff,  
vs.  
24 HOUR FITNESS USA INC.,  
Defendant.

Case No: GIC 818819

ORDER DENYING PERMISSION TO FILE  
NEW LITIGATION (C.C.P. § 391.7b)

The court has reviewed the papers filed by plaintiff on September 18, 2003. JAMES M. KINDER'S application for an order granting vexatious litigant permission to file new litigation is denied pursuant to California Code of Civil Procedure § 391.7 for the reasons stated below.

In his complaint plaintiff alleges that defendant has initiated telephone calls to his phone in violation of the federal Telephone Consumer Protection Act of 1991. The specific violation alleged is multiple calls from an automated dialing system to his voice mail, which is assigned to a paging service.

Plaintiff has not filed any declarations, nor is his Complaint verified. Without some form of evidence this court has nothing but bare allegations upon which to base it's ruling. These allegations, both in their facts and evidentiary value, are insufficient for this court to conclude this action has sufficient potential merit to allow plaintiff to proceed and is not simply filed to harass the defendant. In addition, plaintiff is aware of the factual and legal issues presented by

1 this action and appears to have drafted his unverified complaint ambiguously in order to avoid  
2 those same issues.

3 This court takes Judicial Notice pursuant to California Evidence Code § 452 of the file in  
4 case number GIC 789588. That action involved many of the same issues as does this action.  
5 This Court specifically takes Judicial Notice of the order granting summary judgment in favor of  
6 the defendant wherein the court found, with respect to plaintiff's phone number, as follows: "the  
7 number is not "assigned to a paging service" because it is undisputed that the number is not  
8 longer used in conjunction with a pager. Instead, the number is assigned to a voicemail service  
9 and Mr. Kinder is not charged based on the amount of calls received. The ordinary and plain  
10 meaning of the term "paging service" suggests a paid service in which the user is alerted each  
11 time a call is made to the number. This is not analogous to a voicemail service in which the user  
12 periodically calls the service to retrieve messages." Because the only evidence before this court  
13 is that the number is not assigned to a paging service, as is required by 47 U.S.C. 227, the  
14 complaint has no merit.

15 This court further takes note that there were factual issues as to whether the 999-9999  
16 number was randomly generated or was a default number, or was otherwise intentionally entered  
17 in the system, and whether a random number generator was, in fact, used. Those same issues are  
18 present here and plaintiff makes no attempt to provide this court with any evidence that they  
19 would be resolved in his favor.

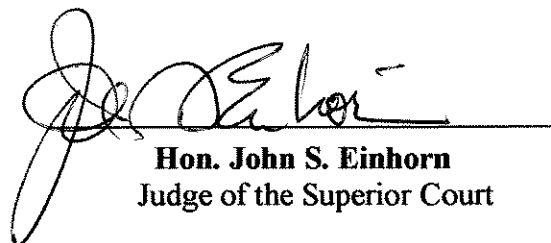
20 Plaintiff is has a legal education and, based thereon, is presumed to understand the legal  
21 impediments these findings present in the present case..

22 Therefore, this court finds that this litigation does not have merit and has been filed for  
23 the purpose of harassment and/or delay.

24 IT IS SO ORDERED.

25 Dated this 7<sup>th</sup> day of October, 2003.

By:

  
**Hon. John S. Einhorn**  
Judge of the Superior Court

# EXHIBIT 10

JAMES M. KINDER  
5775 Caminito Pulsera  
La Jolla, CA 92037-7160  
Telephone: (858) 551-8852  
Facsimile: (858) 551-8859

Plaintiff in Pro Per

RECEIVED  
SEP 18 2008  
BUT NOT FILED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,

Plaintiff,

v.

BAY AREA CREDIT SERVICE, INC.,  
and DOES 1 through 100 inclusive,

Defendants.

CASE NO.

GIC

818818

COMPLAINT FOR DAMAGES FOR  
VIOLATION(S) OF TELEPHONE  
CONSUMER PROTECTION ACT OF  
1991 ("TCPA")  
[47 U.S.C. §227 & 47 C.F.R. §64.1200]

Plaintiff JAMES M. KINDER alleges:

1. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

2. Plaintiff is, and at all times herein mentioned was, a resident of the County of San Diego, State of California.

3. Defendants are, and at all times herein mentioned were, business organizations of unknown form, doing business in the County of San Diego, State of California.

4. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named

1 defendants is responsible in some manner for the occurrences herein alleged and that plaintiff's  
2 damages as herein alleged were proximately caused by their conduct.

3 5. At all times herein mentioned each defendant was the partner, agent and employee  
4 of each co-defendant herein and was at all times acting within the scope of such partnership,  
5 agency and employment and each defendant ratified the conduct of each co-defendant herein.

6 6. Even though the TCPA is a federal statute, state courts have exclusive jurisdiction  
7 over private actions brought pursuant to its provisions.

8 7. A few years ago, plaintiff, for valuable consideration, obtained the voice mail  
9 telephone number (619) 999-9999. Plaintiff obtained this number so that his clients and  
10 customers, as well as potential clients and customers, would easily remember it, thereby making  
11 it an extremely valuable number.

12 8. Subdivision (b)(1)(A)(iii) of section 227 of title 47 of the United States Code and  
13 subdivision (a)(1)(iii) of section 64.12000 of title 47 of the Code of Federal Regulations make it  
14 unlawful for any person within the United States to make any call using any automatic telephone  
15 dialing system to any telephone number assigned to a paging service, cellular telephone service,  
16 specialized mobile radio service, or other radio common carrier service, or any service for which  
17 the called party is charged for the call.

18 9. Defendants are primarily engaged in the business of debt collection and in  
19 connection with such business make telephone calls using an automatic telephone dialing system.

20 10. The telephone number (619) 999-9999 is assigned to a paging service, which also  
21 provides voice mail service.

22 11. Defendants have violated the TCPA by frequently calling plaintiff's voice mail at  
23 (619) 999-9999, using an automatic telephone dialing system.

24 12 Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a  
25 private right of action in state court for violation of the above subsection. Plaintiff may obtain  
26 relief in the form of injunctive relief, or plaintiff may recover \$500.00 for each violation, or both.  
27 If the court finds that defendants' violations were willful or knowing, it may, in its discretion,  
28 award up to three times that amount.



1 13. Defendants have made at least twelve (12) calls to plaintiff's voice mail number.

2 WHEREFORE plaintiff prays for judgment against defendants, and each of them, as  
3 follows:

- 4 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 or 47 C.F.R.  
5 §64.1200;  
6 2. For an award of \$1,500.00 for each such violation found to have been willful;  
7 3. For costs of suit herein incurred; and  
8 4. For such further relief as the Court deems proper.

9  
10 Dated: September 15, 2003

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13 JAMES M. KINDER, Plaintiff in Pro Per  
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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3 <sup>RD</sup> AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792	<b>F I L E D</b> Clerk of the Superior Court <b>OCT 08 2003</b> By: C. VASQUEZ, Deputy
PLAINTIFF(S)/PETITIONER(S) <p style="text-align: center;"><b>JAMES M. KINDER</b></p>	
DEFENDANT(S)/RESPONDENT(S) <p style="text-align: center;"><b>BAY AREA CREDIT SERVICE, INC.</b></p>	Judge: <b>JOHN S. EINHORN</b> Dept.: <b>24</b>
<p style="text-align: center;"><b>CLERK'S CERTIFICATE OF SERVICE BY MAIL</b>  <b>(CCP 1013a(4))</b></p>	CASE NUMBER: <b>GIC818818</b>

I, **STEPHEN LOVE**, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

**ORDER DENYING PERMISSION TO FILE NEW LITIGATION**  
**DATED: OCTOBER 7, 2003**

On the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at:

☒ San Diego    ☐ Vista    ☐ El Cajon    ☐ Chula Vista    ☐ Oceanside    ☐ Ramona,    California.

**JAMES KINDER**  
**5775 CAMINITO PULSERA**  
**LA JOLLA, CA 92037-7160**

**STEPHEN LOVE**  
**CLERK OF THE SUPERIOR COURT**

Date: October 8, 2003

By: , Deputy

**CLERK'S CERTIFICATE OF MAILING**

F I L E D  
Clerk of the Superior Court  
OCT 07 2003  
By: C. VASQUEZ, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,  
Plaintiff,

vs.

BAY AREA CREDIT SERVICE INC.,  
Defendant.

Case No: GIC 818818

ORDER DENYING PERMISSION TO FILE  
NEW LITIGATION (C.C.P. § 391.7b)

The court has reviewed the papers filed by plaintiff on September 18, 2003. JAMES M. KINDER'S application for an order granting vexatious litigant permission to file new litigation is denied pursuant to California Code of Civil Procedure § 391.7 for the reasons stated below.

In his complaint plaintiff alleges that defendant has initiated telephone calls to his phone in violation of the federal Telephone Consumer Protection Act of 1991. The specific violation alleged is multiple calls from an automated dialing system to his voice mail, which is assigned to a paging service.

Plaintiff has not filed any declarations, nor is his Complaint verified. Without some form of evidence this court has nothing but bare allegations upon which to base it's ruling. These allegations, both in their facts and evidentiary value, are insufficient for this court to conclude this action has sufficient potential merit to allow plaintiff to proceed and is not simply filed to harass the defendant. In addition, plaintiff is aware of the factual and legal issues presented by

1 this action and appears to have drafted his unverified complaint ambiguously in order to avoid  
2 those same issues.

3 This court takes Judicial Notice pursuant to California Evidence Code § 452 of the file in  
4 case number GIC 789588. That action involved many of the same issues as does this action.  
5 This Court specifically takes Judicial Notice of the order granting summary judgment in favor of  
6 the defendant wherein the court found, with respect to plaintiff's phone number, as follows: "the  
7 number is not "assigned to a paging service" because it is undisputed that the number is not  
8 longer used in conjunction with a pager. Instead, the number is assigned to a voicemail service  
9 and Mr. Kinder is not charged based on the amount of calls received. The ordinary and plain  
10 meaning of the term "paging service" suggests a paid service in which the user is alerted each  
11 time a call is made to the number. This is not analogous to a voicemail service in which the user  
12 periodically calls the service to retrieve messages." Because the only evidence before this court  
13 is that the number is not assigned to a paging service, as is required by 47 U.S.C. 227, the  
14 complaint has no merit.

15 This court further takes note that there were factual issues as to whether the 999-9999  
16 number was randomly generated or was a default number, or was otherwise intentionally entered  
17 in the system, and whether a random number generator was, in fact, used. Those same issues are  
18 present here and plaintiff makes no attempt to provide this court with any evidence that they  
19 would be resolved in his favor.

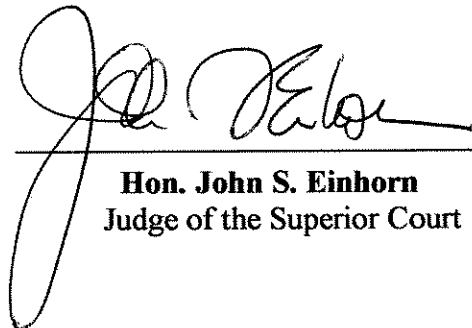
20 Plaintiff is has a legal education and, based thereon, is presumed to understand the legal  
21 impediments these findings present in the present case..

22 Therefore, this court finds that this litigation does not have merit and has been filed for  
23 the purpose of harassment and/or delay.

24 IT IS SO ORDERED.

25 Dated this 7th day of October, 2003.

By:



**Hon. John S. Einhorn**  
Judge of the Superior Court

# EXHIBIT 11

1 JAMES M. KINDER  
5775 Caminito Pulsera  
2 La Jolla, CA 92037-7160  
Telephone: (858) 551-8852  
3 Facsimile: (858) 551-8859

4 Plaintiff in Pro Per

RECEIVED

SEP 18 2007  
me

BUT NOT FILED

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN DIEGO

11 JAMES M. KINDER,

12 Plaintiff,

13 v.

14 WASHINGTON MUTUAL BANK, (1)  
15 WASHINGTON MUTUAL FINANCE, (2)  
16 NORTH AMERICAN MORTGAGE  
COMPANY, (3)  
and DOES 1 through 100 inclusive,

17 Defendants.  
18

CASE NO. **GIC 818816**

COMPLAINT FOR DAMAGES FOR  
VIOLATION(S) OF TELEPHONE  
CONSUMER PROTECTION ACT OF  
1991 ("TCPA")

19 Plaintiff JAMES M. KINDER alleges:

20 1. Plaintiff is bringing this action pursuant to the provisions of the Telephone  
21 Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

22 2. Plaintiff is, and at all times herein mentioned was, a resident of the County  
23 of San Diego, State of California.

24 3. Defendants are, and at all times herein mentioned were, business organizations of  
25 unknown form, doing business in the County of San Diego, State of California.

26 4. Plaintiff is unaware of the true names and capacities of defendants sued herein as  
27 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.

28 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

1 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named  
2 defendants is responsible in some manner for the occurrences herein alleged and that plaintiff's  
3 damages as herein alleged were proximately caused by their conduct.

4 5. At all times herein mentioned each defendant was the partner, agent and employee  
5 of each co-defendant herein and was at all times acting within the scope of such partnership,  
6 agency and employment and each defendant ratified the conduct of each co-defendant herein.

7 6. Even though the TCPA is a federal statute, state courts have exclusive jurisdiction  
8 over private actions brought pursuant to its provisions.

9 7. A few years ago, plaintiff, for valuable consideration, obtained the voice mail  
10 telephone number (619) 999-9999. Plaintiff obtained this number so that his clients and  
11 customers, as well as potential clients and customers, would easily remember it, thereby making  
12 it an extremely valuable number.

13 8. Subdivision (b)(1)(A)(iii) of section 227 of title 47 of the United States Code and  
14 subdivision (a)(1)(iii) of section 64.12000 of title 47 of the Code of Federal Regulations make it  
15 unlawful for any person within the United States to make any call using any automatic telephone  
16 dialing system to any telephone number assigned to a paging service, cellular telephone service,  
17 specialized mobile radio service, or other radio common carrier service, or any service for which  
18 the called party is charged for the call.

19 9. Defendants are primarily engaged in the business of debt collection and, in  
20 connection with such business, make telephone calls using an automatic telephone dialing  
21 system.

22 10. The telephone number (619) 999-9999 is assigned to a paging service, which also  
23 provides voice mail service.

24 11. Defendants have violated the TCPA by frequently calling plaintiff's voice mail at  
25 (619) 999-9999, using an automatic telephone dialing system.

26 12 Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a  
27 private right of action in state court for violation of the above subsection. Plaintiff may obtain  
28 relief in the form of injunctive relief, or plaintiff may recover \$500.00 for each violation, or both.

1 If the court finds that defendants' violations were willful or knowing, it may, in its discretion,  
2 award up to three times that amount.

3 13. Defendants have made at least twenty-four (24) calls to plaintiff's voice mail  
4 number.

5 WHEREFORE plaintiff prays for judgment against defendants, and each of them, as  
6 follows:

- 7 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 or 47 C.F.R.  
8 §64.1200;
- 9 2. For an award of \$1,500.00 for each such violation found to have been willful;
- 10 3. For costs of suit herein incurred; and
- 11 4. For such further relief as the Court deems proper.

12  
13 Dated: September 15, 2003

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16 JAMES M. KINDER, Plaintiff in Pro Per  
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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4 <sup>TH</sup> AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3 <sup>RD</sup> AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792		<b>FILED</b> Clerk of the Superior Court <b>OCT 08 2003</b> By: C. VASQUEZ, Deputy
PLAINTIFF(S)/PETITIONER(S) <p style="text-align: center;"><b>JAMES M. KINDER</b></p>		
DEFENDANT(S)/RESPONDENT(S) <b>WASHINGTON MUTUAL BANK, et al</b>		Judge: <b>JOHN S. EINHORN</b> Dept.: <b>24</b>
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL</b> <b>(CCP 1013a(4))</b>		CASE NUMBER: <b>GIC818816</b>

I, **STEPHEN LOVE**, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

**ORDER DENYING PERMISSION TO FILE NEW LITIGATION**

**DATED: OCTOBER 7, 2003**

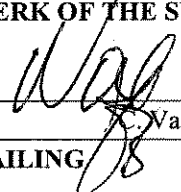
On the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at:

☒ San Diego
 ☐ Vista
 ☐ El Cajon
 ☐ Chula Vista
 ☐ Oceanside
 ☐ Ramona,
 California.

<b>JAMES KINDER</b> <b>5775 CAMINITO PULSERA</b> <b>LA JOLLA, CA 92037-7160</b>	
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**STEPHEN LOVE**  
**CLERK OF THE SUPERIOR COURT**

Date: October 8, 2003

By: , Deputy  
 C. Vasquez

**CLERK'S CERTIFICATE OF MAILING**

F I L E D  
Clerk of the Superior Court  
OCT 07 2003  
By: C. VASQUEZ, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,  
Plaintiff,

vs.

WASHINGTON MUTUAL BANK,  
Defendant.

Case No: GIC 818816

ORDER DENYING PERMISSION TO FILE  
NEW LITIGATION (C.C.P. § 391.7b)

The court has reviewed the papers filed by plaintiff on September 18, 2003. JAMES M. KINDER'S application for an order granting vexatious litigant permission to file new litigation is denied pursuant to California Code of Civil Procedure § 391.7 for the reasons stated below.

In his complaint plaintiff alleges that defendant has initiated telephone calls to his phone in violation of the federal Telephone Consumer Protection Act of 1991. The specific violation alleged is multiple calls from an automated dialing system to his voice mail, which is assigned to a paging service.

Plaintiff has not filed any declarations, nor is his Complaint verified. Without some form of evidence this court has nothing but bare allegations upon which to base it's ruling. These allegations, both in their facts and evidentiary value, are insufficient for this court to conclude this action has sufficient potential merit to allow plaintiff to proceed and is not simply filed to harass the defendant. In addition, plaintiff is aware of the factual and legal issues presented by

1 this action and appears to have drafted his unverified complaint ambiguously in order to avoid  
2 those same issues.

3 This court takes Judicial Notice pursuant to California Evidence Code § 452 of the file in  
4 case number GIC 789588. That action involved many of the same issues as does this action.  
5 This Court specifically takes Judicial Notice of the order granting summary judgment in favor of  
6 the defendant wherein the court found, with respect to plaintiff's phone number, as follows: "the  
7 number is not "assigned to a paging service" because it is undisputed that the number is not  
8 longer used in conjunction with a pager. Instead, the number is assigned to a voicemail service  
9 and Mr. Kinder is not charged based on the amount of calls received. The ordinary and plain  
10 meaning of the term "paging service" suggests a paid service in which the user is alerted each  
11 time a call is made to the number. This is not analogous to a voicemail service in which the user  
12 periodically calls the service to retrieve messages." Because the only evidence before this court  
13 is that the number is not assigned to a paging service, as is required by 47 U.S.C. 227, the  
14 complaint has no merit.

15 This court further takes note that there were factual issues as to whether the 999-9999  
16 number was randomly generated or was a default number, or was otherwise intentionally entered  
17 in the system, and whether a random number generator was, in fact, used. Those same issues are  
18 present here and plaintiff makes no attempt to provide this court with any evidence that they  
19 would be resolved in his favor.

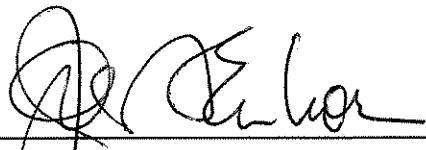
20 Plaintiff is has a legal education and, based thereon, is presumed to understand the legal  
21 impediments these findings present in the present case..

22 Therefore, this court finds that this litigation does not have merit and has been filed for  
23 the purpose of harassment and/or delay.

24 IT IS SO ORDERED.

25 Dated this 14 day of October, 2003.

By:

  
\_\_\_\_\_  
**Hon. John S. Einhorn**  
Judge of the Superior Court

# EXHIBIT 12

JAMES M. KINDER  
5775 Caminito Pulsera  
La Jolla, CA 92037-7160  
Telephone: (858) 551-8852  
Facsimile: (858) 551-8859

Plaintiff in Pro Per

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BUT NOT FILED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,

Plaintiff,

v.

WESTERN COLLECTION RECOVERY, INC.,  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.



818817

COMPLAINT FOR DAMAGES FOR  
VIOLATION(S) OF TELEPHONE  
CONSUMER PROTECTION ACT OF  
1991 ("TCPA")  
[47 U.S.C. §227 & 47 C.F.R. §64.1200]

Plaintiff JAMES M. KINDER alleges:

1. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

2. Plaintiff is, and at all times herein mentioned was, a resident of the County of San Diego, State of California.

3. Defendants are, and at all times herein mentioned were, business organizations of unknown form, doing business in the County of San Diego, State of California.

4. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.

Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

Plaintiff is informed and believes and thereon alleges that each of the fictitiously named

1 defendants is responsible in some manner for the occurrences herein alleged and that plaintiff's  
2 damages as herein alleged were proximately caused by their conduct.

3 5. At all times herein mentioned each defendant was the partner, agent and employee  
4 of each co-defendant herein and was at all times acting within the scope of such partnership,  
5 agency and employment and each defendant ratified the conduct of each co-defendant herein.

6 6. Even though the TCPA is a federal statute, state courts have exclusive jurisdiction  
7 over private actions brought pursuant to its provisions.

8 7. A few years ago, plaintiff, for valuable consideration, obtained the voice mail  
9 telephone number (619) 999-9999. Plaintiff obtained this number so that his clients and  
10 customers, as well as potential clients and customers, would easily remember it, thereby making  
11 it an extremely valuable number.

12 8. Subdivision (b)(1)(A)(iii) of section 227 of title 47 of the United States Code and  
13 subdivision (a)(1)(iii) of section 64.12000 of title 47 of the Code of Federal Regulations make it  
14 unlawful for any person within the United States to make any call using any automatic telephone  
15 dialing system to any telephone number assigned to a paging service, cellular telephone service,  
16 specialized mobile radio service, or other radio common carrier service, or any service for which  
17 the called party is charged for the call.

18 9. Defendants are primarily engaged in the business of debt collection, and in  
19 connection with such business make telephone calls using an automatic telephone dialing system.

20 10. The telephone number (619) 999-9999 is assigned to a paging service, which also  
21 provides voice mail service.

22 11. Defendants have violated the TCPA by frequently calling plaintiff's voice mail at  
23 (619) 999-9999, using an automatic telephone dialing system.

24 12 Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a  
25 private right of action in state court for violation of the above subsection. Plaintiff may obtain  
26 relief in the form of injunctive relief, or plaintiff may recover \$500.00 for each violation, or both.  
27 If the court finds that defendants' violations were willful or knowing, it may, in its discretion,  
28 award up to three times that amount.

1 13. Defendants have made at least two (2) calls to plaintiff's voice mail number.  
2 WHEREFORE plaintiff prays for judgment against defendants, and each of them, as  
3 follows:

- 4 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 or 47 C.F.R.  
5 §64.1200;  
6 2. For an award of \$1,500.00 for each such violation found to have been willful;  
7 3. For costs of suit herein incurred; and  
8 4. For such further relief as the Court deems proper.

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10 Dated: September 15, 2003

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13 JAMES M. KINDER, Plaintiff in Pro Per  
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PLAINTIFF(S)/PETITIONER(S)  <b>JAMES M. KINDER</b>		
DEFENDANT(S)/RESPONDENT(S) <b>WESTERN COLLECTION RECOVERY INC.</b>		Judge: <b>JOHN S. EINHORN</b> Dept.: <b>24</b>
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL</b> <b>(CCP 1013a(4))</b>		CASE NUMBER: <b>GIC818817</b>

I, **STEPHEN LOVE**, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

**ORDER DENYING PERMISSION TO FILE NEW LITIGATION**  
**DATED: OCTOBER 7, 2003**

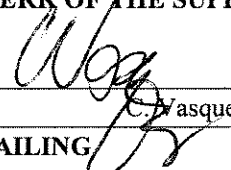
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☒ San Diego    ☐ Vista    ☐ El Cajon    ☐ Chula Vista    ☐ Oceanside    ☐ Ramona,    California.

**JAMES KINDER**  
**5775 CAMINITO PULSERA**  
**LA JOLLA, CA 92037-7160**

**STEPHEN LOVE**  
**CLERK OF THE SUPERIOR COURT**

Date: October 8, 2003

By: , Deputy

**CLERK'S CERTIFICATE OF MAILING**

F I L E D

Clerk of the Superior Court

OCT 07 2003

By: C. VASQUEZ, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,

Plaintiff,

vs.

WESTERN COLLECTION RECOVERY Inc,

Defendant.

Case No: GIC 818817

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Plaintiff has not filed any declarations, nor is his Complaint verified. Without some form of evidence this court has nothing but bare allegations upon which to base it's ruling. These allegations, both in their facts and evidentiary value, are insufficient for this court to conclude this action has sufficient potential merit to allow plaintiff to proceed and is not simply filed to harass the defendant. In addition, plaintiff is aware of the factual and legal issues presented by

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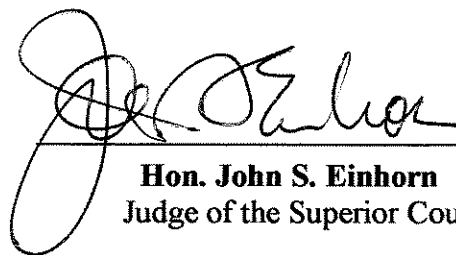
20 Plaintiff is has a legal education and, based thereon, is presumed to understand the legal  
21 impediments these findings present in the present case..

22 Therefore, this court finds that this litigation does not have merit and has been filed for  
23 the purpose of harassment and/or delay.

24 IT IS SO ORDERED.

25 Dated this 7th day of October, 2003.

By:



**Hon. John S. Einhorn**  
Judge of the Superior Court